ILLINOIS GROUNDWATER PROTECTION ACT (P.A. 85-863)
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FOR THE FOLLOWING GROUNDWATER INFORMATION CONTACT THE SOURCES LISTED.

General information, educational materials, or referral--Illinois Department of Energy and Natural Resources, 325 W. Adams St., Springfield, IL 62704-1892; (217) 785-2800.

Concerns about non-community wells--your local health department or Illinois Department of Public Health, Office of Health Protection, 525 W. Jefferson St., Springfield, IL 62761; (217) 782-5830.

Concerns about community wells--Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, IL 62794-9276; (217) 782-9470.

Concerns about hazardous wastes and their disposal--Hazardous Waste Research and Information Center, 1808 Woodfield Road, Savoy, IL 61874; (217) 333-8940.

AN ACT in relation to the protection, preservation and management of the groundwater of the State of Illinois.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act shall be known as and may be cited as the "Illinois Groundwater Protection Act".

Section 2. (a) The General Assembly finds that:

(i) a large portion of Illinois' citizens rely on groundwater for personal consumption, and industries use a significant amount of groundwater;

(ii) contamination of Illinois groundwater will adversely impact the health and welfare of its citizens and adversely impact the economic viability of the State;

(iii) contamination of Illinois' groundwater is occurring;

(iv) protection of groundwater is a necessity for future economic development in this State.

(b) Therefore, it is the policy of the State of Illinois to restore, protect, and enhance the groundwaters of the State, as a natural and public resource. The State recognizes the essential and pervasive role of groundwater in the social and economic well-being of the people of Illinois, and its vital importance to the general health, safety, and welfare. It is further recognized as consistent with this policy that the groundwater resources of the State be utilized for beneficial and legitimate purposes; that waste and degradation of the resources be prevented; and that the underground water resource be managed to allow for maximum benefit of the people of the State of Illinois.

Section 3. As used in this Act, unless the context clearly requires otherwise:

(a) "Agency" means the Illinois Environmental Protection Agency.

(b) "Aquifer" means saturated (with groundwater) soils and geologic materials which are sufficiently permeable to readily yield economically useful quantities of water to wells, springs, or streams under ordinary hydraulic gradients.

(c) "Board" means the Illinois Pollution Control Board.

(d) "Committee" means the Interagency Coordinating Committee on Groundwater as hereinafter created.

(e) "Council" means the Groundwater Advisory Council.

(f) "Department" means the Illinois Department of Energy and Natural Resources.

(g) "Groundwater" means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than

atmospheric pressure.

(h) "Potable" means generally fit for human consumption in accordance with accepted water supply principles and practices.

(i) "Regulated recharge area" means a compact geographic area, as determined by the Board, the geology of which renders a potable resource groundwater particularly susceptible to contamination.

(j) "Resource groundwater" means groundwater that is presently being or in the future capable of being put to beneficial use by reason of being of suitable quality.

(k) "Underground water" means all water beneath the land surface.

Section 4. (a) There shall be established within State government an interagency committee which shall be known as the Interagency Coordinating Committee on Groundwater. The Committee shall be composed of the Director, or his designee, of the following agencies:

(1) the Illinois Environmental Protection Agency, who shall chair the Committee;

(2) the Illinois Department of Energy and Natural Resources;

(3) the Illinois Department of Public Health;

(4) the Illinois Department of Mines and Minerals;

(5) the Office of the State Fire Marshal;

(6) the Division of Water Resources of the Illinois Department of Transportation;

(7) the Illinois Department of Agriculture;

(8) the Illinois Emergency Services and Disaster Agency;

(9) the Illinois Department of Nuclear Safety; and

(10) the Illinois Department of Commerce and Community Affairs.

(b) The Committee shall meet not less than twice each calendar year and shall:

(1) review and coordinate the State's policy on groundwater protection;

(2) review and evaluate State laws, regulations and procedures that relate to groundwater protection;

(3) review and evaluate the status of the State's efforts to improve the quality of the groundwater and of the State enforcement efforts for protection of the groundwater and make recommendations on improving the State efforts to protect the groundwater;

(4) recommend procedures for better coordination among State groundwater programs and with local programs related to groundwater protection;

(5) review and recommend procedures to coordinate the State's response to specific incidents of groundwater pollution and coordinate dissemination of information between

agencies responsible for the State's response;

(6) make recommendations for and prioritize the State's groundwater research needs;

(7) review, coordinate and evaluate groundwater data collection and analysis; and

(8) beginning on January 1, 1990, report biennially to the Governor and the General Assembly on groundwater quality, quantity and the State's enforcement efforts.

(c) The Chairman of the Committee shall propose a groundwater protection regulatory agenda for consideration by the Committee and the Council. The principal purpose of such agenda shall be to systematically consider the groundwater protection aspects of relevant federal and State regulatory programs and to identify any areas where improvements may be warranted. To the extent feasible, such agenda may also serve to facilitate a more uniform and coordinated approach toward protection of groundwaters in Illinois. Upon adoption of the final agenda by the Committee, the Chairman of the Committee shall assign a lead agency and any support agencies to prepare a regulatory assessment report for each item on the agenda. Each such report shall specify the nature of the groundwater protection provisions being implemented and shall evaluate the results achieved therefrom. Special attention shall be given to any preventive measures being utilized for protection of groundwaters. Such reports shall be completed in a timely manner. After review and consideration by the Committee, such reports shall become the basis for recommending further legislative or regulatory action.

(d) No later than January 1, 1992, the Interagency Coordinating Committee on Groundwater shall provide a comprehensive status report to the Governor and the General Assembly concerning implementation of this Act.

(e) The Committee shall consider findings and recommendations which are provided by the Council, and respond in writing regarding such matters. The Chairman of the Committee shall designate a liaison person to serve as a facilitator of communications with the Council.

Section 5. (a) There shall be established a Groundwater Advisory Council. The Council shall be composed of 9 public members appointed by the Governor, including 2 persons representing environmental interests, 2 persons representing industrial and commercial interests, one person representing agricultural interests, one person representing local government interests, one person representing a regional planning agency, one person representing public water supplies, and one person representing the water well driller industry. From among these members, a chairperson shall be selected by majority vote and shall preside for a one-year term. The terms of memberships in the Council shall be for 3

years. The Council shall:

(1) review, evaluate and make recommendations regarding State laws, regulations and procedures that relate to groundwater protection;

(2) review, evaluate and make recommendations regarding the State's efforts to implement this Act and to generally protect the groundwater of the State;

(3) make recommendations relating to the State's needs for groundwater research; and

(4) review, evaluate and make recommendations regarding groundwater data collection and analyses.

(b) Members of the Groundwater Advisory Council shall be reimbursed for ordinary and necessary expenses incurred in the performance of their duties, except such reimbursement shall be limited to expenses associated with no more than 3 meetings per calendar year. The Agency shall provide the Council with such supporting services as are reasonable for the performance of its duties.

Section 6. (a) The Department with the cooperation of the Agency, the Department of Public Health, the Department of Agriculture and others as needed, shall develop, coordinate and conduct an education program for groundwater protection. The program shall include, but not be limited to, education for the general public, business, agriculture, government, and private water supply owners, users and operators.

(b) The education program shall address at least the following topics: hydrogeologic principles, groundwater protection issues, State groundwater policy, potential contamination sources, potential water quality problems, well protection measures, and the need for periodic well tests.

(c) The Department shall cooperate with local governments and regional planning agencies and committees to coordinate local and regional education programs and workshops, and to expedite the exchange of technical information.

Section 7. (a) The Department, with the advice of the Committee and the Council, shall develop a coordinated groundwater data collection and automation program. The collected and automated data shall include but need not be limited to groundwater monitoring results, well logs, pollution source permits and water quality assessments. The Department shall act as the repository for such data and shall automate this data in a manner that is accessible and usable by all State agencies.

(b) The Department, in consultation with the Agency, the Committee and the Council, shall develop and administer an ongoing program of basic and applied research relating to groundwater. Information generated from this program will be

made available to local governments seeking technical assistance from the Department. The research program shall include but need not be limited to:

(1) Long-term statewide groundwater quality monitoring. A statewide monitoring well network shall be composed of public water supply wells sampled by the Agency, non-community wells sampled by the Department of Public Health, and a representative sampling of other existing private wells and newly constructed, dedicated monitoring wells. The monitoring program shall be operated for the following purposes: to evaluate, over time, the appropriateness and effectiveness of groundwater quality protection measures; to determine regional trends in groundwater quality which may affect public health and welfare; and to help identify the need for corrective action. The Department shall periodically publish the results of groundwater quality monitoring activities.

(2) Statewide groundwater assessment. The Department shall conduct assessments to enhance the State's data base concerning groundwater resources. The assessments shall include location of groundwater resources, mapping of aquifers, identification of appropriate recharge areas, and evaluation of baseline groundwater quality. The Department shall complete the statewide mapping of appropriate recharge areas within 18 months after the enactment of this Act at a level of detail suitable for guiding the Agency in establishing priority groundwater protection planning regions.

(3) Evaluation of pesticide impacts upon groundwater. Such evaluation shall include the general location and extent of any contamination of groundwaters resulting from pesticide use, determination of any practices which may contribute to contamination of groundwaters, and recommendations regarding measures which may help prevent degradation of groundwater quality by pesticides. Priority shall be given to those areas of the State where pesticides are utilized most intensively. The Department shall prepare an initial report by January 1, 1990.

(4) Other basic and applied research. The Department may conduct research in at least the following areas: groundwater hydrology and hydraulics, movement of contaminants through geologic materials, aquifer restoration, and remediation technologies.

(c) The Department is authorized to accept and expend, subject to appropriation by the General Assembly, any and all grants, matching funds, appropriations from whatever source, or other items of value from the federal or state governments or from any institution, person, partnership, joint venture, or corporation, public or private, for the purposes of

fulfilling its obligations under this Act.

Section 8. (a) The Agency, after consultation with the Committee and the Council, shall propose regulations establishing comprehensive water quality standards which are specifically for the protection of groundwater. In preparing such regulations, the Agency shall address, to the extent feasible, those contaminants which have been found in the groundwaters of the State and which are known to cause, or suspected of causing, cancer, birth defects, or any other adverse effect on human health according to nationally accepted guidelines. Such regulations shall be submitted to the Board by July 1, 1989.

(b) Within 2 years after the date upon which the Agency files the proposed regulations, the Board shall promulgate the water quality standards for groundwater. In promulgating these regulations, the Board shall, in addition to the factors set forth in Title VII of the Environmental Protection Act, consider the following:

(1) recognition that groundwaters differ in many important respects from surface waters, including water quality, rate of movement, direction of flow, accessibility, susceptibility to pollution, and use;

(2) classification of groundwaters on an appropriate basis, such as their utility as a resource or susceptability to contamination;

(3) preference for numerical water quality standards, where possible, over narrative standards, especially where specific contaminants have been commonly detected in groundwaters or where federal drinking water levels or advisories are available;

(4) application of nondegradation provisions for appropriate groundwaters, including notification limitations to trigger preventive response activities;

(5) relevant experiences from other states where groundwater protection programs have been implemented; and

(6) existing methods of detecting and quantifying contaminants with reasonable analytical certainty.

(c) To provide a process to expedite promulgation of groundwater quality standards, the provisions of this Section shall be exempt from the requirements of subsection (b) of Section 27 of the "Environmental Protection Act", approved June 29, 1970, as amended; and shall be exempt from the provisions of Sections 4 and 5 of "An Act in relation to natural resources, research, data collection and environmental studies", approved July 1, 1978, as amended.

(d) The Department of Energy and Natural Resources, with the cooperation of the Committee and the Agency, shall conduct a study of the economic impact of the regulations developed pursuant to this Section. The study shall include,

but need not be limited to, consideration of the criteria established in subsection (a) of Section 4 of "An Act in relation to natural resources, research, data collection and environmental studies", approved July 1, 1978, as amended. This study shall be conducted concurrently with the development of the regulations developed pursuant to this Section. Work on this study shall commence as soon as is administratively practicable after the Agency begins development of the regulations. The study shall be submitted to the Board no later than 60 days after the proposed regulations are filed with the Board.

The Department shall consult with the Economic Technical Advisory Committee during the development of the regulations and the economic impact study required in this Section and shall consider the comments of the Committee in the study.

(e) The Board may combine public hearings on the economic impact study conducted by the Department with any hearings required under Board rules.

Section 9. (a) As used in this Section, unless the context clearly requires otherwise:

(1) "Community water system" means a public water system which serves at least 15 service connections used by residents or regularly serves at least 25 residents for at least 60 days per year.

(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(3) "Department" means the Illinois Department of Public Health.

(4) "Non-community water system" means a public water system which is not a community water system, and has at least 15 service connections used by nonresidents, or regularly serves 25 or more nonresident individuals daily for at least 60 days per year.

(5) "Private water system" means any supply which provides water for drinking, culinary, and sanitary purposes and serves an owner-occupied single family dwelling.

(6) "Public water system" means a system for the provision to the public of piped water for human consumption, if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. The term "public water system" includes any collection, treatment, storage or distribution facilities under control of the operator of such system and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(7) "Semi-private water system" means a water supply which is not a public water system, yet which serves a

segment of the public other than an owner-occupied single family dwelling.

(8) "Supplier of water" means any person who owns or operates a water system.

(b) No non-community water system may be constructed, altered, or extended until plans, specifications, and other information relative to such system are submitted to and reviewed by the Department for conformance with the rules promulgated under this Section, and until a permit for such activity is issued by the Department.

(c) All private and semi-private water systems shall be constructed in accordance with the rules promulgated by the Department under this Section.

(d) The Department shall promulgate rules for the construction and operation of all non-community and semi-private water systems. Such rules shall include but need not be limited to: the establishment of maximum contaminant levels no more stringent than federally established standards where such standards exist; the maintenance of records; and requirements for the submission and frequency of submission of water samples by suppliers of water to determine the water quality.

(e) Borings, water monitoring wells, and wells subject to this Act shall, at a minimum, be abandoned and plugged in accordance with the requirements of Sections 16 and 19 of "An Act in relation to oil, gas, coal and other surface and underground resources and to repeal an Act herein named", filed July 29, 1941, as amended, and such rules as are promulgated thereunder. Nothing herein shall preclude the Department from adopting plugging and abandonment requirements which are more stringent than the rules of the Department of Mines and Minerals where necessary to protect the public health.

(f) The Department shall inspect all non-community water systems for the purpose of determining compliance with the provisions of this Section and the regulations promulgated hereunder.

(g) The Department may inspect semi-private and private water systems for the purpose of determining compliance with the provisions of this Section and the regulations promulgated hereunder.

(h) The supplier of water shall be given written notice of all violations of this Section or the rules promulgated hereunder and all such violations shall be corrected in a manner and time specified by the Department.

(i) The Department may conduct inspections to investigate the construction or water quality of non-community or semi-private water systems, or the construction of private water systems. Upon request of the

owner or user, the Department may also conduct investigations of the water quality of private water systems.

(j) The supplier of water for a private, semi-private, or non-community water system shall allow the Department and its authorized agents access to such premises at all reasonable times for the purpose of inspection.

(k) The Department may designate full-time county or multiple-county health departments as its agents to facilitate the implementation of this Section.

(l) The Department shall promulgate and publish rules necessary for the enforcement of this Section.

(m) Whenever a non-community or semi-private water system fails to comply with an applicable maximum contaminant level at the point of use, the supplier of water shall give public notification by the conspicuous posting of notice of such failure as long as the failure continues. The notice shall be written in a manner reasonably designed to fully inform users of the system that a drinking water regulation has been violated, and shall disclose all material facts.

(n) The provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended, are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Public Health under this Section, except that in case of conflict between "The Illinois Administrative Procedure Act" and this Section, the provisions of this Section shall control; and except that Section 5 of "The Illinois Administrative Procedure Act" relating to procedures for rulemaking shall not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.

(o) All final administrative decisions of the Department issued pursuant to this Section shall be subject to judicial review pursuant to the provisions of the "Administrative Review Law", approved August 19, 1981, as amended, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(p) The Director, after notice and opportunity for hearing to the applicant, may deny, suspend, or revoke a permit in any case in which he or she finds that there has been a substantial failure to comply with the provisions of this Section or the standards, rules and regulations established by virtue thereof.

Such notice shall be effected by certified mail or by personal service setting forth the particular reasons for the proposed action and fixing a date, not less than 15 days from the date of such mailing or service, at which time the

applicant shall be given an opportunity to request hearing.

The hearing shall be conducted by the Director or by an individual designated in writing by the Director as Hearing Officer to conduct the hearing. On the basis of any such hearing, or upon default of the applicant, the Director shall make a determination specifying his or her findings and conclusions. A copy of such determination shall be sent by certified mail or served personally upon the applicant.

(q) The procedure governing hearings authorized by this Section shall be in accordance with rules promulgated by the Department. A full and complete record shall be kept of all proceedings, including the notice of hearing, complaint and all other documents in the nature of pleadings, written motions filed in the proceedings, and the report and orders of the Director and Hearing Officer. All testimony shall be reported but need not be transcribed unless review of the decision is sought pursuant to the Administrative Review Law. Copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copies. The Director or Hearing Officer shall, upon his or her own motion or on the written request of any party to the proceeding, issue subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Section may be served by any person of legal age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit courts of this State, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Director or Hearing Officer, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding, the Department may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Department, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum so issued shall be served in the same manner as a subpoena issued by a circuit court.

(r) Any circuit court of this State, upon the application of the Director or upon the application of any other party to the proceeding, may, in its discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Director or Hearing Officer conducting an investigation or holding a hearing authorized by this Section, by an

attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before the court.

(s) The Director or Hearing Officer, or any party in an investigation or hearing before the Department, may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records, or memoranda.

(t) Any person who violates this Section or any rule or regulation adopted by the Department, or who violates any determination or order of the Department under this Section, shall be guilty of a Class A misdemeanor and shall be fined a sum not less than $100. Each day's violation constitutes a separate offense. The State's Attorney of the county in which the violation occurs, or the Attorney General of the State of Illinois, may bring such actions in the name of the People of the State of Illinois; or may in addition to other remedies provided in this Section, bring action for an injunction to restrain such violation, or to enjoin the operation of any establishment.

(u) The State of Illinois, and all of its agencies, institutions, offices and subdivisions shall comply with all requirements, prohibitions and other provisions of this Section and regulations adopted thereunder.

(v) No agency of the State shall authorize, permit or license the construction or operation of any potential route, potential primary source, or potential secondary source, as those terms are defined in the Environmental Protection Act, in violation of any provision of this Section or the regulations adopted hereunder.

(w) This Section shall not apply to any water supply which is connected to a community water supply which is regulated under the Environmental Protection Act.

Section 10. Section 11-125-4 is added to the "Illinois Municipal Code", approved May 29, 1961, as amended, the added Section to read as follows:

(Ch. 24, new par. 11-125-4)

Sec. 11-125-4. The corporate authorities of each municipality served by a community water supply well may perform a groundwater protection needs assessment, and may by ordinance adopt a minimum or maximum setback zone around a wellhead pursuant to Sections 14.2, 14.3, 14.4 and 17.1 of the Environmental Protection Act.

Section 11. Section 16.1 is added to "An Act in relation to water supply drainage, sewage, pollution and flood control in certain counties", approved July 22, 1959, as amended, the added Section to read as follows:

(Ch. 34, new par. 3116.1)

Sec. 16.1. The county board of any county which is served by a community water supply well may perform a groundwater protection needs assessment, and may by ordinance adopt a minimum or maximum setback zone around a wellhead pursuant to Sections 14.2, 14.3, 14.4 and 17.1 of the Environmental Protection Act.

Section 12. Section 2.1 of "An Act in relation to oil, gas, coal and other surface and underground resources and to repeal an Act herein named", approved July 24, 1945, as amended, is amended to read as follows:

(Ch. 96 1/2, par. 5405)

Sec. 2.1. The provisions of this Act do not apply to wells drilled for water (not including wells drilled or used for the purpose of obtaining or prospecting for oil, natural gas, minerals or products of mining or quarrying or for inserting media to repressure oil or natural gas bearing formation or for storing petroleum, natural gas or other products or for observation or any other purpose in connection with the development or operation of a gas storage project), except that any well drilled for potable water which is abandoned prior to January 1, 1988, or for other than potable water which is abandoned at any time, ~~abandoned~~ shall be plugged as provided in clause (1) of Section 6 and in Section 19 of this Act, and any violation or threatened violation of such Sections shall be restrained as provided in Section 11, and except that, prior to January 1, 1988, in the case of wells drilled for potable water and in the case of wells drilled for other than potable water, a permit shall be obtained as provided in clause (2) of Section 6 of this Act and shall be accompanied by payment of a fee of $10 in the form provided in Section 14 of this Act, such permit to expire one year from the date of issuance thereof. The Department shall notify the Department of Public Health of all water well drilling permits when they are issued. Such a permit shall not be issued for any well which is to be drilled by a contractor who has been determined by the Department of Public Health to be in violation of the "Illinois Water Well Construction Code" or the "Illinois Water Well Pump Installation Code", provided that the Mining Board has been notified of such violation by the Department of Public Health. Beginning January 1, 1988, this Act shall not apply to wells drilled for potable water, and no permit for a well drilled for potable water may be issued by the Department; however, the Department of Public Health shall notify the Department of all potable water well drilling permits when they are issued. This Section does not require that any person filing notification of intent to drill a water well or applying for a permit to drill a water well penetrating the subsurface beneath the glacial drift is

required to execute or file with the Mining Board a bond in any amount.

Section 13. Sections 3, 4, 5 and 6 of the "Illinois Water Well Construction Code", approved August 20, 1965, as amended, are amended and Sections 6a, 6b and 6c are added thereto, the amended and added Sections to read as follows:

(Ch. 111 1/2, par. 116.113)

Sec. 3. Definitions. As used in this Act, unless the context otherwise requires:

(a) "Construction" means all acts necessary to obtaining ground water by any method, for human consumption including without limitation the location of and the excavation for the well, but not including prospecting, surveying or other acts preparatory thereto, nor the installation of pumps and pumping equipment.

(b) "Department" means the Department of Public Health.~~;~~

(c) "Director" means the Director of ~~the Department of~~ Public Health.~~;~~

(d) "Modification" means any change, replacement or other alteration of any water well which shall be contrary to the rules and regulations regarding the construction of a well.

(e) "Water well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of such excavation is for the location, diversion, artificial recharge, or acquisition of ground water, but such term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals or products of mining or quarrying or for inserting media to repressure oil or natural gas bearing formation or for storing petroleum, natural gas or other products or for observation or any other purpose in connection with the development or operation of a gas storage project.

(f) "Public water system", "community water system", "non-community water system", "semi-private water system" and "private water system" have the meanings ascribed to them in the Illinois Groundwater Protection Act.

(g) "Potential route", "potential primary source" and "potential secondary source" have the meanings ascribed to them in the Environmental Protection Act.

(Ch. 111 1/2, par. 116.114)

Sec. 4. Scope. No water well shall be located, constructed or modified contrary to the provisions of this Act or any rules and regulations adopted pursuant thereto. The provisions of this Act apply to any water well~~;--where used--or--intended-for-supplying-water-for-human-consumption; which-is-not-otherwise-subject-to-regulation-under--the--laws of--this--State.--This-Act-shall-not-apply-to-water-wells-the~~

~~water-from-which-does-not-come-in-intimate--physical--contact with--humans,--or-the-water-from-which-is-used-for-commercial or--industrial--purposes--and--is--not--intended--for---human consumption.~~

(Ch. 111 1/2, par. 116.115)

Sec. 5. Department powers and duties.

The Department has general supervision and authority over the location, construction and modification of water wells and for the administration of this Act. With respect thereto it shall:

(a) Adopt and publish, and from time to time amend rules and regulations as hereinafter provided;

(b) Commencing no later than January 1, 1988, issue permits for the construction or change in depth of any water well or water well casing of water wells intended for use as potable water supplies other than community water supplies; and

~~(b)--Conduct--public-hearings,-upon-not-less-than-30-days prior-notice-published-in-one-or-more-newspapers--of--general circulation--in--the-State,-in-connection-with-proposed-rules and-regulations-and-amendments-thereto,-and~~

(c) Exercise such other powers as are practical and reasonably necessary to carry out and enforce the provisions of this Act.

(Ch. 111 1/2, par. 116.116)

Sec. 6. Rules and regulations. The Department shall adopt and amend rules and regulations reasonably necessary to effectuate the policy declared by this Act. Such rules and regulations shall provide criteria for the proper location and construction of any water well and shall, no later than January 1, 1988, provide for the issuance of permits for the construction and operation of potable water wells other than community public water systems. The Department shall by regulation require a one time fee, not to exceed $100, for permits for construction issued under the authority of this Act.

(Ch. 111 1/2, new par. 116.116a)

Sec. 6a. Prohibitions. Beginning January 1, 1988, no new non-community, semi-private or private water system well may be located within 200 feet of any potential primary or potential secondary source or any potential route. This prohibition does not apply to any new private water system well where the owner is the same for both the well and a potential secondary source or a potential route. In such instances, the Department shall apply a prohibition of 75 feet and shall inform the well owner of the potential hazards associated with the location of a well in close proximity to a potential source or potential route. Nothing in this Section shall affect any location and construction

requirement imposed in Section 6 of this Act and regulations promulgated thereunder. The Department may grant an exception to the prohibitions in this Section where the owner is the same for both the well and a potential primary or potential secondary source or a potential route. Such exception may only be granted if a demonstration is provided by the owner of the potable water well that applicable protective measures will be utilized to minimize the potential for contamination of the well, and if the resulting well installation can be expected to provide a continuously safe and sanitary water supply.

(Ch. 111 1/2, new par. 116.116b)

Sec. 6b. Assurance of potable water supply. Except as provided in Section 14.2 of the Environmental Protection Act, the owner of every potable water supply well which has been contaminated due to the actions of the owner or operator of a potential primary or potential secondary source or potential route shall be provided an alternative source of potable water of sufficient quality and quantity, or treatment of the waters from such well to achieve a sufficient level of quality and quantity appropriate to protection of the public health, or such other remedy as may be mutually agreed upon by the well owner and the owner or operator of the potential source or potential route. For purposes of this Section, contamination shall mean such alteration of the physical, chemical or biological qualities of the water as to render it unfit for human consumption, or to otherwise render it unfit for use as potable water as measured by applicable groundwater quality standards which are adopted by the Pollution Control Board. All costs of providing alternative or treated potable water supplies under this Section shall be borne by the responsible owners and operators of the contamination source and route. This Section shall apply only to actions of an owner or operator which occur after the effective date of this Section and for which there is adequate reason to believe that a relationship exists between the potential source or potential route and the contaminated well.

(Ch. 111 1/2, new par. 116.116c)

Sec. 6c. Public Health Water Permit Fund. There is hereby created in the State Treasury a special fund to be known as the Public Health Water Permit Fund. All fees collected by the Department pursuant to Section 6 of this Act shall be deposited into the Fund. The amount collected as fees shall be appropriated by the General Assembly to the Department for the purpose of conducting activities relating to groundwater protection.

Section 14. Sections 18, 22.2, 39 and 39.2 of the "Environmental Protection Act", approved June 29, 1970, as

amended, are amended, and Sections 3.58, 3.59, 3.60, 3.61, 3.62, 3.63, 3.64, 3.65, 3.66, 3.67, 14.1, 14.2, 14.3, 14.4, 14.5, 17.1, 17.2, 17.3 and 17.4 are added thereto, the added and amended Sections to read as follows:

(Ch. 111 1/2, new par. 1003.58)

Sec. 3.58. "Potential route" means abandoned and improperly plugged wells of all kinds, drainage wells, all injection wells, including closed loop heat pump wells, and any excavation for the discovery, development or production of stone, sand or gravel.

A new potential route is:

(1) a potential route which is not in existence or for which construction has not commenced at its location as of January 1, 1988, or

(2) a potential route which expands laterally beyond the currently permitted boundary or, if the potential route is not permitted, the boundary in existence as of January 1, 1988.

Construction shall be deemed commenced when all necessary federal, State and local approvals have been obtained, and work at the site has been initiated and proceeds in a reasonably continuous manner to completion.

(Ch. 111 1/2, new par. 1003.59)

Sec. 3.59. "Potential primary source" means any unit at a facility or site not currently subject to a removal or remedial action which:

(1) is utilized for the treatment, storage, or disposal of any hazardous or special waste not generated at the site; or

(2) is utilized for the disposal of municipal waste not generated at the site, other than landscape waste and construction and demolition debris; or

(3) is utilized for the landfilling, land treating, surface impounding or piling of any hazardous or special waste that is generated on the site or at other sites owned, controlled or operated by the same person; or

(4) stores or accumulates at any time more than 75,000 pounds above ground, or more than 7,500 pounds below ground, of any hazardous substances.

A new potential primary source is:

(i) a potential primary source which is not in existence or for which construction has not commenced at its location as of January 1, 1988; or

(ii) a potential primary source which expands laterally beyond the currently permitted boundary or, if the primary source is not permitted, the boundary in existence as of January 1, 1988; or

(iii) a potential primary source which is part of a facility that undergoes major reconstruction. Such

reconstruction shall be deemed to have taken place where the fixed capital cost of the new components constructed within a 2-year period exceed 50% of the fixed capital cost of a comparable entirely new facility.

Construction shall be deemed commenced when all necessary federal, State and local approvals have been obtained, and work at the site has been initiated and proceeds in a reasonably continuous manner to completion.

(Ch. 111 1/2, new par. 1003.60)

Sec. 3.60. "Potential secondary source" means any unit at a facility or a site not currently subject to a removal or remedial action, other than a potential primary source, which:

(1) is utilized for the landfilling, land treating, or surface impounding of waste that is generated on the site or at other sites owned, controlled or operated by the same person, other than livestock and landscape waste, and construction and demolition debris; or

(2) stores or accumulates at any time more than 25,000 but not more than 75,000 pounds above ground, or more than 2,500 but not more than 7,500 pounds below ground, of any hazardous substances; or

(3) stores or accumulates at any time more than 25,000 gallons above ground, or more than 500 gallons below ground, of petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance; or

(4) stores or accumulates pesticides, fertilizers, or road oils for purposes of commercial application or for distribution to retail sales outlets; or

(5) stores or accumulates at any time more than 50,000 pounds of any de-icing agent; or

(6) is utilized for handling livestock waste or for treating domestic wastewaters other than private sewage disposal systems as defined in the "Private Sewage Disposal Licensing Act".

A new potential secondary source is:

(i) a potential secondary source which is not in existence or for which construction has not commenced at its location as of July 1, 1988; or

(ii) a potential secondary source which expands laterally beyond the currently permitted boundary or, if the secondary source is not permitted, the boundary in existence as of July 1, 1988, other than an expansion for handling of livestock waste or for treating domestic wastewaters; or

(iii) a potential secondary source which is part of a facility that undergoes major reconstruction. Such reconstruction shall be deemed to have taken place where the fixed capital cost of the new components constructed within a

2-year period exceed 50% of the fixed capital cost of a comparable entirely new facility.

Construction shall be deemed commenced when all necessary federal, State and local approvals have been obtained, and work at the site has been initiated and proceeds in a reasonably continuous manner to completion.

(Ch. 111 1/2, new par. 1003.61)

Sec. 3.61. "Setback zone" means a geographic area, designated pursuant to this Act, containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwaters.

(Ch. 111 1/2, new par. 1003.62)

Sec. 3.62. "Unit" means any device, mechanism, equipment, or area (exclusive of land utilized only for agricultural production).

(Ch. 111 1/2, new par. 1003.63)

Sec. 3.63. "Contamination" or "contaminate", when used in connection with groundwater, means water pollution of such groundwater.

(Ch. 111 1/2, new par. 1003.64)

Sec. 3.64. "Groundwater" means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure.

(Ch. 111 1/2, new par. 1003.65)

Sec. 3.65. "Potable" means generally fit for human consumption in accordance with accepted water supply principles and practices.

(Ch. 111 1/2, new par. 1003.66)

Sec. 3.66. "Resource groundwater" means groundwater that is presently being or in the future capable of being put to beneficial use by reason of being of suitable quality.

(Ch. 111 1/2, new par. 1003.67)

Sec. 3.67. "Regulated recharge area" means a compact geographic area, as determined by the Board, the geology of which renders a potable resource groundwater particularly susceptible to contamination.

(Ch. 111 1/2, new par. 1014.1)

Sec. 14.1. A minimum setback zone is established for the location of each new community water supply well as follows:

(a) No new community water supply well may be located within 200 feet of any potential primary or potential secondary source or any potential route.

(b) No new community water supply well deriving water from fractured or highly permeable bedrock or from an unconsolidated and unconfined sand and gravel formation may be located within 400 feet of any potential primary or

potential secondary source or any potential route. Such 400 foot setback is not applicable to any new community water supply well where the potential primary or potential secondary source is located within a site for which certification is currently in effect pursuant to Section 14.5.

(c) Nothing in this Section shall affect any location and construction requirement imposed in Section 6 of the "Illinois Water Well Construction Code", approved August 20, 1965, as amended, and the regulations promulgated thereunder.

(d) For the purposes of this Section, a community water supply well is "new" if it is constructed after the effective date of this Section.

(e) Nothing in this Section shall affect the minimum distance requirements for new community water supply wells relative to common sources of sanitary pollution as specified by rules adopted under Section 17 of this Act.

(Ch. 111 1/2, new par. 1014.2)

Sec. 14.2. A minimum setback zone is established for the location of each new potential source or new potential route as follows:

(a) Except as provided in subsections (b), (c) and (h) of this Section, no new potential route or potential primary source or potential secondary source may be placed within 200 feet of any existing or permitted community water supply well or other potable water supply well.

(b) The owner of a new potential primary source or a potential secondary source or a potential route may secure a waiver from the requirement of subsection (a) of this Section for a potable water supply well other than a community water supply well. A written request for a waiver shall be made to the owner of the water well and the Agency. Such request shall identify the new or proposed potential source or potential route, shall generally describe the possible effect of such potential source or potential route upon the water well and any applicable technology-based controls which will be utilized to minimize the potential for contamination, and shall state whether, and under what conditions, the requestor will provide an alternative potable water supply. Waiver may be granted by the owner of the water well no less than 90 days after receipt of the request unless prior to such time the Agency notifies the well owner that it does not concur with the request.

The Agency shall not concur with any such request which fails to accurately describe reasonably foreseeable effects of the potential source or potential route upon the water well or any applicable technology-based controls. Such notification by the Agency shall be in writing, and shall include a statement of reasons for the nonconcurrence.

Waiver of the minimum setback zone established under subsection (a) of this Section shall extinguish the water well owner's rights under Section 6b of the Illinois Water Well Construction Code but shall not preclude enforcement of any law regarding water pollution. If the owner of the water well has not granted a waiver within 120 days after receipt of the request or the Agency has notified the owner that it does not concur with the request, the owner of a potential source or potential route may file a petition for an exception with the Board and the Agency pursuant to subsection (c) of this Section.

No waiver under this Section is required where the potable water supply well is part of a private water system as defined in the Illinois Groundwater Protection Act, and the owner of such well will also be the owner of a new potential secondary source or a potential route. In such instances, a prohibition of 75 feet shall apply and the owner shall notify the Agency of the intended action so that the Agency may provide information regarding the potential hazards associated with location of a potential secondary source or potential route in close proximity to a potable water supply well.

(c) The Board may grant an exception from the setback requirements of this Section and Section 14.3 to the owner of a new potential route, a new potential primary source other than landfilling or land treating, or a new potential secondary source. The owner seeking an exception with respect to a community water supply well shall file a petition with the Board and the Agency. The owner seeking an exception with respect to a potable water supply well other than a community water supply well shall file a petition with the Board and the Agency, and set forth therein the circumstances under which a waiver has been sought but not obtained pursuant to subsection (b) of this Section. A petition shall be accompanied by proof that the owner of each potable water supply well for which setback requirements would be affected by the requested exception has been notified and been provided with a copy of the petition. A petition shall set forth such facts as may be required to support an exception, including a general description of the potential impacts of such potential source or potential route upon groundwaters and the affected water well, and an explanation of the applicable technology-based controls which will be utilized to minimize the potential for contamination of the potable water supply well.

The Board shall grant an exception, whenever it is found upon presentation of adequate proof, that compliance with the setback requirements of this Section would pose an arbitrary and unreasonable hardship upon the petitioner, that the

petitioner will utilize the best available technology controls economically achievable to minimize the likelihood of contamination of the potable water supply well, that the maximum feasible alternative setback will be utilized, and that the location of such potential source or potential route will not constitute a significant hazard to the potable water supply well.

Not later than January 1, 1988, the Board shall adopt procedural rules governing requests for exceptions under this subsection. The rulemaking provisions of Title VII of this Act and of Section 5 of the Illinois Administrative Procedure Act shall not apply to such rules. A decision made by the Board pursuant to this subsection shall constitute a final determination.

The granting of an exception by the Board shall not extinguish the water well owner's rights under Section 6b of the Illinois Water Well Construction Code in instances where the owner has elected not to provide a waiver pursuant to subsection (b) of this Section.

(d) Except as provided in subsections (c) and (h) of this Section and Section 14.5, no new potential route or potential primary source or potential secondary source may be placed within 400 feet of any existing or permitted community water supply well deriving water from an unconfined shallow fractured or highly permeable bedrock formation or from an unconsolidated and unconfined sand and gravel formation. The Agency shall notify, not later than January 1, 1988, the owner and operator of each existing well which is afforded this setback protection and shall maintain a directory of all community water supply wells to which the 400 foot minimum setback zone applies.

(e) The minimum setback zones established under subsections (a) and (b) of this Section shall not apply to new common sources of sanitary pollution as specified pursuant to Section 17 and the regulations adopted thereunder by the Agency; however, no such common sources may be located within the applicable minimum distance from a community water supply well specified by such regulations.

(f) Nothing in this Section shall be construed as limiting the power of any county or municipality to adopt ordinances which are consistent with but not more stringent than the prohibitions herein.

(g) Nothing in this Section shall preclude any arrangement under which the owner or operator of a new source or route does the following:

(1) purchases an existing water supply well and attendant property with the intent of eventually abandoning or totally removing the well;

(2) replaces an existing water supply well with a new

water supply of substantially equivalent quality and quantity as a precondition to locating or constructing such source or route; or

(3) implements any other arrangement which is mutually agreeable with the owner of a water supply well.

(h) A new potential route, which is an excavation for stone, sand or gravel and which becomes active on lands which were acquired or were being held as mineral reserves prior to the effective date of this amendatory Act of 1987, shall only be subject to the setback requirements of subsections (a) and (d) of this Section with respect to any community water supply well, non-community water system well, or semi-private water system well in existence prior to January 1, 1988.

(Ch. 111 1/2, new par. 1014.3)

Sec. 14.3. A maximum setback zone may be established for a community water supply well as follows:

(a) Owners of community water supplies which utilize any water well, or any county or municipality served by any community water supply well, may determine the lateral area of influence of the well under normal operational conditions. The Agency shall adopt procedures by which such determinations may be made including, where appropriate, pumping tests and estimation techniques.

(b) Where the results of any determination made pursuant to subsection (a) of this Section disclose that the distance from the well to the outermost boundary of the lateral area of influence of the well under normal operational conditions exceeds the radius of the minimum setback zone established for that well pursuant to Section 14.2, any county or municipality served by such water supply may in writing request the Agency to review and confirm the technical adequacy of such determination. The Agency shall, within 90 days of the request, notify the county or municipality whether the determination is technically adequate for describing the outer boundary of drawdown of the affected groundwater by the well under normal operational conditions. Any action by the Agency hereunder shall be in writing and shall constitute a final determination of the Agency.

(c) Upon receipt of Agency confirmation of the technical adequacy of such determination, the county or municipality may, after notice and opportunity for comment, adopt an ordinance setting forth the location of each affected well and specifying the boundaries of a maximum setback zone, which boundaries may be irregular. In no event, however, shall any portion of such a boundary be in excess of 1,000 feet from the wellhead. Such ordinance shall include the area within the applicable minimum setback zone and shall incorporate requirements which are consistent with but not more stringent than the prohibitions of this Act and the

regulations promulgated by the Board under Section 14.4. Upon adoption, the county or municipality shall provide a copy of the ordinance to the Agency. Any county or municipality which fails to adopt such an ordinance within 2 years of receipt of Agency confirmation of technical adequacy may not proceed under the authority of this Section without obtaining a new confirmation of the technical adequacy pursuant to subsection (b) of this Section.

(d) After July 1, 1989, and upon written notice to the county or municipality, the Agency may propose to the Board a regulation establishing a maximum setback zone for any well subject to this Section. Such proposal shall be based upon all reasonably available hydrogeologic information, include the justification for expanding the zone of wellhead protection, and specify the boundaries of such zone, no portion of which boundaries shall be in excess of 1,000 feet from the wellhead. Such justification may include the need to protect a sole source of public water supply or a highly vulnerable source of groundwater, or an Agency finding that the presence of potential primary or potential secondary sources or potential routes represents a significant hazard to the public health or the environment. The Agency may proceed with the filing of such a proposal unless the county or municipality, within 30 days of the receipt of the written notice, files a written request for a conference with the Agency. Upon receipt of such a request, the Agency shall schedule a conference to be held within 90 days thereafter. At the conference, the Agency shall inform the county or municipality regarding the proposal. Within 30 days after the conference, the affected unit of local government may provide written notice to the Agency of its intent to establish a maximum setback zone in lieu of the Agency acting on a proposal. Upon receipt of such a notice of intent, the Agency may not file a proposal with the Board for a period of 6 months. Rulemaking proceedings initiated by the Agency under this subsection shall be conducted by the Board pursuant to Title VII of this Act, except that subsection (b) of Section 27 shall not apply.

Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate regulations pursuant to Title VII of this Act. Nothing in this subsection shall limit the right of any person to participate in rulemaking proceedings conducted by the Board under this subsection.

(e) Except as provided in subsection (c) of Section 14.2, no new potential primary source shall be placed within the maximum setback zone established for any community water supply well pursuant to this Section. Nothing in this subsection shall be construed as limiting the power of any

county or municipality to adopt ordinances which are consistent with but not more stringent than the prohibition as stated herein.

(Ch. 111 1/2, new par. 1014.4)

Sec. 14.4. (a) No later than January 1, 1989, the Agency, after consultation with the Interagency Coordinating Committee on Groundwater and the Groundwater Advisory Council, shall propose regulations to the Board prescribing standards and requirements for the following activities:

(1) landfilling, land treating, surface impounding or piling of special waste and other wastes which could cause contamination of groundwater and which are generated on the site, other than hazardous, livestock and landscape waste, and construction and demolition debris;

(2) storage of special waste in an underground storage tank for which federal regulatory requirements for the protection of groundwater are not applicable;

(3) storage and related handling of pesticides and fertilizers at a facility for the purpose of commercial application;

(4) storage and related handling of road oils and de-icing agents at a central location; and

(5) storage and related handling of pesticides and fertilizers at a central location for the purpose of distribution to retail sales outlets.

In preparing such regulation, the Agency shall provide as it deems necessary for more stringent provisions for those activities enumerated in this subsection which are not already in existence. Any activity for which such standards and requirements are proposed may be referred to as a new activity.

(b) Within 2 years after the date upon which the Agency files the proposed regulations pursuant to subsection (a) of this Section, the Board shall promulgate appropriate regulations for existing activities. In promulgating these regulations, the Board shall, in addition to the factors set forth in Title VII of this Act, consider the following:

(1) appropriate programs for water quality monitoring;

(2) reporting, recordkeeping and remedial response measures;

(3) appropriate technology-based measures for pollution control; and

(4) requirements for closure or discontinuance of operations.

Such regulations as are promulgated pursuant to this subsection shall be for the express purpose of protecting groundwaters. The applicability of such regulations shall be limited to any existing activity which is located:

(A) within a setback zone regulated by this Act, other

than an activity located on the same site as a non-community water system well and for which the owner is the same for both the activity and the well; or

(B) within a regulated recharge area as delineated by Board regulation, provided that:

(i) the boundary of the lateral area of influence of a community water supply well located within the recharge area includes such activity therein;

(ii) the distance from the wellhead of the community water supply to the activity does not exceed 2500 feet; and

(iii) the community water supply well was in existence prior to January 1, 1988.

In addition, the Board shall ensure that the promulgated regulations are consistent with and not pre-emptive of the certification system provided by Section 14.5.

(c) Concurrently with the action mandated by subsection (a), the Agency shall evaluate, with respect to the protection of groundwater, the adequacy of existing federal and State regulations regarding the disposal of hazardous waste and the offsite disposal of special and municipal wastes. The Agency shall then propose, as it deems necessary, additional regulations for such new disposal activities as may be necessary to achieve a level of groundwater protection that is consistent with the regulations proposed under subsection (a) of this Section.

(d) Following receipt of proposed regulations submitted by the Agency pursuant to subsection (a) of this Section, the Board shall promulgate appropriate regulations for new activities. In promulgating these regulations, the Board shall, in addition to the factors set forth in Title VII of this Act, consider the following:

(1) appropriate programs for water quality monitoring, including, where appropriate, notification limitations to trigger preventive response activities;

(2) design practices and technology-based measures appropriate for minimizing the potential for groundwater contamination;

(3) reporting, recordkeeping and remedial response measures; and

(4) requirements for closure or discontinuance of operations.

Such regulations as are promulgated pursuant to this subsection shall be for the express purpose of protecting groundwaters. The applicability of such regulations shall be limited to any new activity which is to be located within a setback zone regulated by this Act, or which is to be located within a regulated recharge area as delineated by Board regulation. In addition, the Board shall ensure that the promulgated regulations are consistent with and not

pre-emptive of the certification system provided by Section 14.5.

(e) Nothing in this Section shall be construed as prohibiting any person for whom regulations are promulgated by the Board pursuant to subsection (b) or (c) of this Section, from proposing and obtaining, concurrently with the regulations proposed by the Agency pursuant to subsection (a) of this Section, a rule specific to individual persons or sites pursuant to Title VII of this Act which codifies alternative groundwater protection methods that provide substantially equivalent protection for community water supplies.

(f) Nothing in this Section shall be construed as limiting the power of any county or municipality to adopt ordinances, which are consistent with but not more stringent than the regulations adopted by the Board pursuant to this Section, for application of standards and requirements within such setback zones as are provided by this Act.

(g) The Agency shall prepare a groundwater protection regulatory agenda for submittal to the Interagency Coordinating Committee on Groundwater and the Groundwater Advisory Council. In preparing this agenda, the Agency shall consider situations where gaps may exist in federal or State regulatory protection for groundwater, or where further refinements could be necessary to achieve adequate protection of groundwater.

(h) Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate regulations pursuant to Title VII of this Act.

(Ch. 111 1/2, new par. 1014.5)

Sec. 14.5. The Agency shall administer a certification system for sites which represent a minimal hazard with respect to contamination of groundwaters by potential primary or potential secondary sources. No later than January 1, 1988, the Agency shall develop and make available a minimal hazard certification form and guidelines for the use and management of containers and above ground tanks, and for the piling of waste.

(b) After January 1, 1988, the owner of any site which would otherwise be subject to the provisions of subsection (d) of Section 14.2 or Section 14.4 and regulations adopted thereunder may provide a certification of minimal hazard to the Agency if the following conditions are met:

(1) no on-site landfilling, land treating, or surface impounding of waste, other than landscape waste or construction and demolition debris, has taken place and such circumstance will continue;

(2) no on-site piles of special or hazardous waste are present and such circumstance will continue, and any piling

of other wastes which could cause contamination of groundwater will be consistent with guidelines developed by the Agency;

(3) no underground storage tanks are present on the site and such circumstances will continue;

(4) use and management of containers and above ground tanks will be consistent with guidelines developed by the Agency;

(5) no on-site release of any hazardous substance or petroleum has taken place which was of sufficient magnitude to contaminate groundwaters;

(6) no more than 100 gallons of either pesticides or organic solvents, or 10,000 gallons of any hazardous substances, or 30,000 gallons of petroleum, will be present at any time; and

(7) notice has been given to the owner of each community water supply well within 1,000 feet of the site.

(c) Upon receipt of a certification pursuant to subsection (b) of this Section, the Agency shall, within 90 days, take one of the following actions:

(1) notify the owner of the site in writing that the certification is complete and adequate;

(2) notify the owner of the site in writing that the certification is not adequate, including a statement of the reasons therefor;

(3) notify the owner of the site in writing that a site inspection will be held within 120 days, and that following such inspection but still within the 120 day period further action will be taken pursuant to item (1) or (2) of this subsection; or

(4) notify in writing the owner of the site that pursuant to Section 17.1 a county or municipality is conducting a groundwater protection needs assessment or the Agency is conducting a well site survey which encompasses the site for which certification is being processed, and specify a time period, not to exceed a total of 180 days from the date of the notice, for consideration of the findings from such assessment or survey and by which further action will be taken pursuant to item (1) or (2) of this subsection.

A certification is not adequate if it fails to address each of the conditions required to be met by subsection (b) of this Section, or if the Agency possesses information which reasonably suggests that any statement made in the certification is inaccurate or incomplete. Action under item (1) or (2) of this subsection shall constitute a final determination of the Agency.

(d) When a certification has been provided with respect to which the Agency has made a finding of adequacy or has failed to act in a timely manner pursuant to subsection (c)

of this Section, the site shall not be subject to the provisions of subsection (d) of Section 14.2 or Section 14.4 and regulations adopted thereunder for the following time periods:

(1) one year, if the Agency has failed to act in a timely manner pursuant to subsection (c) of this Section, during which time the owner must recertify to continue such status;

(2) three years, if the site is located within a minimum or maximum setback zone, during which time the owner must recertify to continue such status;

(3) five years, if the site is located within a regulated recharge area, during which time the owner must recertify to continue such status; or

(4) 90 days past the time when a change of ownership takes place, during which time the new owner must recertify to continue such status.

(e) During the effective period of a certification, the owner of the site shall maintain compliance with the conditions specified in subsection (b) of this Section. Any failure by the owner to maintain such compliance shall be just cause for decertification by the Agency. Such action may only be taken after the Agency has provided the owner with a written notice which identifies the noncompliance and specifies a 30 day period during which a written response may be provided by the owner. Such response may describe any actions taken by the owner which relate to the conditions of certification. If such response is deficient or untimely, the Agency shall serve notice upon the owner that the site has been decertified and is subject to the applicable provisions of subsection (d) of Section 14.2 or Section 14.4 and regulations adopted thereunder. Such notification shall constitute a final determination of the Agency.

(f) The Agency shall maintain a master listing, indexed by county, of those sites for which certifications are in effect. Upon the establishment of a regional planning committee pursuant to Section 17.2, the Agency shall provide a copy of the pertinent portions of such listing to such committee on a quarterly basis. The Agency shall also make copies of such listing available to units of local government and the public upon request.

(g) The Agency may enter into a written delegation agreement with any county or municipality, which has adopted an ordinance consistent with Section 14.2 or 14.3, to administer the provisions of this Section. Such delegation agreements shall require that the work to be performed thereunder shall be in accordance with criteria established by the Agency, be subject to periodic review by the Agency, and shall include such financial and program auditing by the

Agency as may be necessary.

(Ch. 111 1/2, new par. 1017.1)

Sec. 17.1. (a) Every county or municipality which is served by a community water supply well may prepare a groundwater protection needs assessment. The county or municipality shall provide notice to the Agency regarding the commencement of an assessment. Such assessment shall consist of the following at a minimum:

(1) Evaluation of the adequacy of protection afforded to resource groundwater by the minimum setback zone and, if applicable, the maximum setback zone;

(2) Delineation, to the extent practicable, of the recharge area outside of any applicable setback zones but contained within any area over which the county or municipality has jurisdiction or control;

(3) Identification and location of potential primary and potential secondary sources and potential routes within, and if appropriate, in proximity to the delineated recharge area for each such well;

(4) Evaluation of the hazard associated with identified potential primary and potential secondary sources and potential routes contained within the recharge area specified according to subparagraph (a)(2) of this Section, taking into account the characteristics of such potential sources and potential routes, the nature and efficacy of containment measures and devices in use, the attenuative qualities of site soils in relation to the substances involved, the proximity of potential sources and potential routes and the nature, rate of flow, direction of flow and proximity of the uppermost geologic formation containing groundwater utilized by the well;

(5) Evaluation of the extent to which existing local controls provide, either directly or indirectly, some measure of groundwater protection; and

(6) Identification of practicable contingency measures, including provision of alternative drinking water supplies, which could be implemented in the event of contamination of the water supply.

(b) Upon completion of the groundwater protection needs assessment, the county or municipality shall publish, in a newspaper of general circulation within the county or municipality, notification of the completion of such assessment and of the availability of such assessment for public inspection. At a minimum, such assessment shall be available for inspection and copying, at cost, by the general public during regular business hours at the offices of such county or municipality. Information within the groundwater protection needs assessment which is claimed to be confidential, privileged or trade secret information shall be

accorded protection by the county or municipality pursuant to the Freedom of Information Act, as amended. A copy of the assessment shall be filed by the county or municipality with the Agency and any applicable regional planning committee within 30 days of completion.

(c) If a county or municipality has not commenced to prepare a groundwater protection needs assessment for a community water supply which is investor owned, then said owner may notify the county or municipality in writing of its intent to prepare such an assessment. The owner may proceed with the preparation of an assessment unless the county or municipality, within 30 days of the receipt of the written notice, responds in writing that an assessment will be undertaken. Upon receipt of such a written response, the owner shall not proceed for a period of 90 days. After this period, the owner may proceed to prepare an assessment if the county or municipality has not commenced such action. The owner shall provide notice to the Agency regarding the commencement of an assessment. An assessment which is prepared by such an owner shall be done in accordance with the provisions of subsection (a) of this Section. Upon completion of the assessment, the owner shall provide copies of such assessment to the county or municipality, any applicable regional planning committee and the Agency within 30 days.

(d) The Agency shall implement a survey program for community water supply well sites. The survey program shall be organized on a priority basis so as to efficiently and effectively address areas of protective need. Each well site survey shall consist of the following at a minimum:

(1) Summary description of the geographic area within a 1,000 foot radius around the wellhead;

(2) Topographic or other map of suitable scale of each well site denoting the location of the wellhead, the 1,000 foot radius around the wellhead, and the location of potential sources and potential routes of contamination within this zone;

(3) A summary listing of each potential source or potential route of contamination, including the name or identity and address of the facility, and a brief description of the nature of the facility; and

(4) A general geologic profile of the 1,000 foot radius around the wellhead, including depth and age of the well, construction of the casing, formations penetrated by the well and approximate thickness and extent of these formations.

(e) Upon completion of a well site survey, the Agency shall provide the county or municipality, any applicable regional planning committee and, where applicable, the owner and operator of the community water supply well, with a

report which summarizes the results of the survey.

(f) Upon receipt of a notice of commencement of a groundwater protection needs assessment from a county or municipality pursuant to subsection (a), or from an owner of an investor owned community water supply pursuant to subsection (c), the Agency may determine that a well site survey is not necessary for that locale. If the county, municipality or other owner does not complete the assessment in a timely manner, then the Agency shall reconsider the need to conduct a survey.

(g) The Agency may issue an advisory of groundwater contamination hazard to a county or municipality which has not prepared a groundwater protection needs assessment and for which the Agency has conducted a well site survey. Such advisory may only be issued where the Agency determines that existing potential primary sources, potential secondary sources or potential routes identified in the survey represent a significant hazard to the public health or the environment. The Agency shall publish notice of such advisory in a newspaper of general circulation within the county or municipality and shall furnish a copy of such advisory to any applicable regional planning committee.

(h) Any county or municipality subject to subsection (a) above, but having a population of less than 25,000 or 5,000 persons, respectively, may request, upon receipt of a well site survey report, the Agency to identify those potential primary sources, potential secondary sources and potential routes which represent a hazard to the continued availability of groundwaters for public use, given the susceptibility of the groundwater recharge area to contamination. Such Agency action may serve in lieu of the groundwater protection needs assessment specified in subsection (a) of this Section. The Agency shall also inform any applicable regional planning committee regarding the findings made pursuant to this subsection.

(i) Upon request, the Agency and the Department may provide technical assistance to counties or municipalities in conducting groundwater protection needs assessments.

(Ch. 111 1/2, new par. 1017.2)

Sec. 17.2. (a) The Agency shall establish a regional groundwater protection planning program. The Agency, in cooperation with the Department, shall designate priority groundwater protection planning regions. Such designations shall take into account the location of recharge areas that are identified and mapped by the Department. Such designations may not be made until at least 18 months after the effective date of the Illinois Groundwater Protection Act or until the completion of the mapping by the Department, whichever event occurs first.

(b) The Agency shall establish a regional planning committee for each priority groundwater protection planni region. Such committee shall be appointed by the Director and shall include representatives from the Agency and other State agencies as appropriate, representatives from among the counties and municipalities in the region, representatives from among the owners or operators of public water supplies which use groundwater in the region, and at least 3 members of the general public which have an interest in groundwater protection. From among the non-State agency members, a chairperson shall be selected by a majority vote. Members of a regional planning committee shall serve for a term of 2 years.

(c) Each regional planning committee shall be responsible for the following:

(1) identification of and advocacy for region-specific groundwater protection matters;

(2) monitoring and reporting the progress made within the region regarding implementation of protection for groundwaters;

(3) maintaining a registry of instances where the Agency has issued an advisory of groundwater contamination hazard within the region;

(4) facilitating informational and educational activities relating to groundwater protection within the region; and

(5) recommending to the Agency whether there is a need for regional protection pursuant to Section 17.3. Prior to making any such recommendation, the regional planning committee shall hold at least one public meeting at a location within the region. Such meeting may be held after not less than 30 days notice is provided, and shall provide an opportunity for public comment.

(d) The Agency shall provide the regional planning committee with such supporting services as are reasonable for the performance of its duties with the exception of any review proceeding resulting from a decision made by the Agency pursuant to subsection (b) of Section 17.3.

(Ch. 111 1/2, new par. 1017.3)

Sec. 17.3. (a) The Agency may propose to the Board, pursuant to Section 28, a regulation establishing the boundary for a regulated recharge area if any of the following conditions exist:

(1) the Agency has previously issued one or more advisories within the area;

(2) the Agency determines that a completed groundwater protection needs assessment demonstrates a need for regional protection; or

(3) mapping completed by the Department identifies a

recharge area for which protection is warranted.

(b) The Agency shall propose to the Board, pursuant to Section 28, a regulation establishing the boundary for a regulated recharge area if a regional planning committee files a petition requesting and justifying such action, unless the Agency:

(1) determines that an equivalent proposal is already pending before the Board and so notifies the petitioner within 60 days of the receipt of the petition; or

(2) provides within 120 days a written explanation of why such action is not otherwise warranted.

Such action shall constitute a final determination of the Agency.

(c) At least 60 days prior to the filing of a proposal to establish the boundary for a regulated recharge area, the Agency shall notify in writing each affected county, municipality, township, soil and water conservation district and water district, and shall publish a notice of such intended action in a newspaper of general circulation within the affected area.

(d) In proposing a boundary for a regulated recharge area under this Section, the Agency shall identify each community water supply well for which protection up to 2500 feet will be provided by operation of the regulations adopted by the Board under subsection (b) of Section 14.4 relative to existing activities within the proposed regulated recharge area.

(Ch. 111 1/2, new par. 1017.4)

Sec. 17.4. (a) In promulgating a regulation to establish the boundary for a regulated recharge area, the Board shall, in addition to the factors set forth in Title VII of this Act, consider the following:

(1) the adequacy of protection afforded to potable resource groundwater by any applicable setback zones;

(2) applicability of the standards and requirements promulgated pursuant to Section 14.4;

(3) refinements in the groundwater quality standards which may be appropriate for the delineated area;

(4) the extent to which the delineated area may serve as a sole source of supply for public water supplies.

(b) The Board may only promulgate a regulation which establishes the boundary for a regulated recharge area if the Board makes a determination that the boundary of the delineated area is drawn so that the natural geological or geographic features contained therein are shown to be highly susceptible to contamination over a predominant portion of the recharge area.

(c) Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate

regulations pursuant to Title VII of this Act.

(Ch. 111 1/2, par. 1018)

Sec. 18. (a) Owners and official custodians of public water supplies shall direct and maintain the continuous operation and maintenance of water-supply facilities so that water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral character for ordinary domestic consumption.

(b) Borings, water monitoring wells, and wells subject to this Act shall, at a minimum, be abandoned and plugged in accordance with the requirements of Sections 16 and 19 of "An Act in relation to oil, gas, coal and other surface and underground resources and to repeal an Act herein named", filed July 29, 1941, as amended, and such rules as are promulgated thereunder. Nothing herein shall preclude the Board from adopting plugging and abandonment requirements which are more stringent than the rules of the Department of Mines and Minerals where necessary to protect the public health and environment.

(Ch. 111 1/2, par. 1022.2)

Sec. 22.2. (a) There are hereby created within the State Treasury two special funds to be known respectively as the "Hazardous Waste Fund" and the "Hazardous Waste Research Fund", constituted from the fees collected pursuant to this Section.

(b) (1) Until January 1, 1984, the Agency shall collect, from the owner or operator of each hazardous waste disposal site, a fee in the amount of 1¢ per gallon or $2.02 per cubic yard of hazardous waste received on and after the effective date of procedures established by the Agency under subparagraph (c) of this Section.

(2) On and after January 1, 1984, the Agency shall collect from the owner or operator of each of the following sites a fee in the amount of:

(A) 3 cents per gallon or $6.06 per cubic yard of hazardous waste received at a hazardous waste disposal site, if the hazardous waste disposal site is located off the site where such waste was produced;

(B) 3 cents per gallon or $6.06 per cubic yard of hazardous waste disposed, if the hazardous waste disposal site is located on the site where such waste was produced, provided however the maximum amount of fees payable under this paragraph (B) is $10,000 per year for each such hazardous waste disposal site;

(C) If the hazardous waste disposal site is an underground injection well, $2,000 per year if not more than 10,000,000 gallons per year are injected, $5,000 per year if more than 10,000,000 gallons but not more than 50,000,000 gallons per year are injected, and $9,000 per year if more

than 50,000,000 gallons per year are injected.

(D) 1 cent per gallon or $2.02 per cubic yard of hazardous waste received for treatment at a hazardous waste treatment site, if the hazardous waste treatment site is located off the site where such waste was produced and if such hazardous waste treatment site is owned, controlled and operated by a person other than the generator of such waste. After treatment at such hazardous waste treatment site, the waste shall not be subject to any other fee imposed by this subsection (b). For purposes of this subsection (b), the term "treatment" is defined as in Section 3.49 but shall not include recycling, reclamation or reuse.

(3) The General Assembly shall annually appropriate to the Fund such amounts as it deems necessary to fulfill the purposes of this Act.

(4) Whenever the unobligated balance of the Hazardous Waste Fund exceeds $10,000,000, the Agency shall suspend the collection of the fees provided for in this Section until the unobligated balance of the Fund falls below $8,000,000.

(5) At least 50% ~~80%~~ of the amount collected as fees provided for in this Section shall be used for making a response action at sites ~~located within the State of Illinois~~ which are listed on the National Priorities List ~~developed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (P.L. 96-510), as amended,~~ provided, however, that paragraph (b)(5) of this Section shall not apply to additional monies appropriated to the Fund by the General Assembly, nor shall paragraph (b)(5) of this Section apply in the event that the Director finds that revenues in the Hazardous Waste Fund must be used to address conditions which create or may create an immediate danger to the environment or public health or to the welfare of the people of the State of Illinois. Up to 30% of the amount collected as fees provided for in this Section may be used by the Agency for groundwater protection activities, including grants to appropriate units of local government which are addressing protection of underground waters pursuant to the provisions of this Act.

(6) Notwithstanding the provisions of this subsection (b) sludge from a publicly-owned sewage works generated in Illinois, coal mining wastes and refuse generated in Illinois, bottom boiler ash, flyash and flue gas desulphurization sludge from public utility electric generating facilities located in Illinois and bottom boiler ash and flyash from all incinerators which process solely municipal waste shall not be subject to the fee.

(c) The Agency shall establish procedures, not later than January 1, 1984, relating to the collection of the fees authorized by this Section. Such procedures shall include,

but not be limited to: (1) necessary records identifying the quantities of hazardous waste received or disposed; (2) the form and submission of reports to accompany the payment of fees to the Agency; and (3) the time and manner of payment of fees to the Agency, which payments shall be not more often than quarterly.

(d) On January 1, 1984 and thereafter, the Agency shall deposit 87.5% of all such receipts in the State Treasury to the credit of the Hazardous Waste Fund established by this Act. All monies in such Fund shall be used by and under the direction of the Agency for the purpose of taking whatever preventive or corrective action is necessary or appropriate in circumstances certified by the Governor and the Director, including but not limited to removal or remedial action whenever there is a release or substantial threat of a release of a hazardous substance; provided, (i) the Agency shall expend no more than $1,000,000 on any single incident without appropriation by the General Assembly; (ii) any monies used from the fund for preventive or corrective action associated with non-permitted sites shall be reimbursed from the General Revenue Fund upon appropriation by the General Assembly. Monies in the Hazardous Waste Fund may also be used to meet any requirements which must be met by the State in order to obtain federal funds pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (P.L. 96-510), as amended, or to conduct groundwater protection activities, including providing grants to appropriate units of local government which are addressing protection of underground waters pursuant to the provisions of this Act. Neither the State, nor the Director, nor any State employee shall be liable for any damages or injury arising out of or resulting from any action taken under this Section. The Director of the Agency is authorized to enter into such contracts and agreements as necessary and as expeditiously as necessary to carry out the Agency's duties under this subsection.

(e) On January 1, 1984 and thereafter, the Agency shall deposit 12.5% of all receipts collected under this Section in the State Treasury to the credit of the Hazardous Waste Research Fund established by this Act. Pursuant to appropriation, all monies in such Fund shall be used by the Department of Energy and Natural Resources for the purposes set forth in this subsection. The Department may enter into contracts with business, industrial, university, governmental or other qualified individuals or organizations to assist in the research and development intended to recycle, reduce the volume of, separate, detoxify or reduce the hazardous properties of hazardous wastes in Illinois. Monies in such Fund may also be used by the Department for technical

studies, monitoring activities, and educational and research activities which are related to the protection of underground waters. Monies in the Hazardous Waste Research Fund may be used to administer the Illinois Health and Hazardous Substances Registry Act. Monies in the Hazardous Waste Research Fund shall not be used for any sanitary landfill or the acquisition or construction of any facility. This does not preclude the purchase of equipment for the purpose of public demonstration projects. The Department shall adopt guidelines for cost sharing, selecting, and administering projects under this subsection.

(f) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (j) of this Section, the following persons shall be liable for all costs of removal or remedial action incurred by the State of Illinois as a result of a release or substantial threat of a release of a hazardous substance:

(1) The owner and operator of a facility or vessel from which there is a release or substantial threat of release of a hazardous substance;

(2) Any person who at the time of disposal, transport, storage or treatment of a hazardous substance owned or operated the facility or vessel used for such disposal, transport, treatment or storage from which there was a release or substantial threat of a release of any such hazardous substance;

(3) Any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal or treatment of hazardous substances owned, controlled or possessed by such person at a facility owned or operated by another party or entity from which facility there is a release or substantial threat of a release of such hazardous substances; and

(4) Any person who accepts or accepted any hazardous substances for transport to disposal, storage or treatment facilities or sites from which there is a release or a substantial threat of a release of a hazardous substance.

Any monies received by the State of Illinois pursuant to paragraph (f) of this Section shall be deposited in the state Treasury to the credit of the "Hazardous Waste Fund".

(g)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or substantial threat of a release under this Section, to any other person the liability imposed under this Section. Nothing in this Section shall bar any agreement to insure, hold harmless or indemnify a party to such agreements for any liability under this Section.

(2) Nothing in this Section, including the provisions of paragraph (g)(1) of this Section, shall bar a cause of action that an owner or operator or any other person subject to liability under this Section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(h) For purposes of this Section:

(1) The term "facility" means:

(A) any building, structure, installation, equipment, pipe or pipeline including but not limited to any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(2) The term "owner or operator" means:

(A) any person owning or operating a vessel or facility; or

(B) in the case of an abandoned facility, any person owning or operating the abandoned facility or any person who owned, operated, or otherwise controlled activities at the abandoned facility immediately prior to such abandonment.

(i) The costs and damages provided for in this Section may be imposed by the Board in an action brought before the Board in accordance with Title VIII of this Act, except that Section 33(c) of this Act shall not apply to any such action.

(j) (1) There shall be no liability under this Section for a person otherwise liable who can establish by a preponderance of the evidence that the release or substantial threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (ii) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of the foregoing paragraphs.

(2) There shall be no liability under this Section for any release permitted by State or federal law.

(3) There shall be no liability under this Section for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with this Section or the National Contingency Plan pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P.L. 96-510, as amended) or at the direction of an on-scene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or a substantial threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(4) No person may recover under the authority of this Section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

(5) Nothing in this subsection (j) shall affect or modify in any way the obligations or liability of any person under any other provision of this Act or State or Federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(k) If any person who is liable for a release or substantial threat of release of a hazardous substance fails without sufficient cause to provide removal or remedial action upon or in accordance with a notice and request by the Agency or upon or in accordance with any order of the Board or any court, such person may be liable to the State for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the State of Illinois as a result of such failure to take such removal or remedial action. The punitive damages imposed by the Board shall be in addition to any costs recovered from such person pursuant to this Section and in addition to any other penalty or relief provided by this Act or any other law.

Any monies received by the State pursuant to this subsection (k) shall be deposited in the Hazardous Waste Fund.

(l) (1) Until ~~Beginning~~ January 1, 1988 ~~1985~~, the Agency shall assess a $100 fee for each Special Waste Hauling Permit Application. Fees collected under this subsection (l)(1)

shall be deposited in the Hazardous Waste Research Fund.

(2) Beginning January 1, 1988, the Agency shall annually collect a $250 fee for each Special Waste Hauling Permit Application and, in addition, shall collect a fee of $20 for each waste hauling vehicle identified in the annual permit application and for each vehicle which is added to the permit during the annual period. The Agency shall deposit 85% of such fees collected under this subsection (1)(2) in the State Treasury to the credit of the Hazardous Waste Research Fund; and shall deposit the remaining 15% of such fees collected in the State Treasury to the credit of the Environmental Protection Permit and Inspection Fund. The majority of such receipts which are deposited in the Hazardous Waste Research Fund pursuant to this subsection shall be used by the Department for activities which relate to the protection of underground waters.

(Ch. 111 1/2, par. 1039)

Sec. 39. (a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In granting permits the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit under this Section, the Agency shall transmit to the applicant within the time limitations of this Section specific, detailed statements as to the reasons the permit application was denied. Such statements shall include, but not be limited to the following:

(i) the Sections of this Act which may be violated if the permit were granted;

(ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were granted;

(iii) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

(iv) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted.

If there is no final action by the Agency within 90 days after the filing of the application for permit, the applicant

may deem the permit issued; except that this time period shall be extended to 180 days when (1) notice and opportunity for public hearing are required by State or federal law or regulation, or (2) the application which was filed is for any permit to develop a landfill subject to issuance pursuant to this subsection.

(b) The Agency may issue NPDES permits exclusively under this subsection for the discharge of contaminants from point sources into navigable waters, all as defined in the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500), within the jurisdiction of the State, or into any well.

All NPDES permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act.

The Agency may issue general NPDES permits for discharges from categories of point sources which are subject to the same permit limitations and conditions. Such general permits may be issued without individual applications and shall conform to regulations promulgated under Section 402 of the Clean Water Act (P.L. 95-217).

The Agency may include, among such conditions, effluent limitations and other requirements established under this Act, Board regulations, the Federal Water Pollution Control Act Amendments of 1972 and regulations pursuant thereto, and schedules for achieving compliance therewith at the earliest reasonable date.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of NPDES permits, and which are consistent with the Act or regulations adopted by the Board, and with the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500) and regulations pursuant thereto.

The Agency, subject to any conditions which may be prescribed by Board regulations, may issue NPDES permits to allow discharges beyond deadlines established by this Act or by regulations of the Board without the requirement of a variance, subject to the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500) and regulations pursuant thereto.

(c) Except for those facilities owned or operated by sanitary districts organized under "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers", approved May 29, 1889, as now or hereafter amended, no permit for the development or construction of a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of said facility has been approved by the County

Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act.

Except for those facilities owned or operated by sanitary districts organized under "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers", approved May 29, 1889, as now or hereafter amended, and except for new regional pollution control facilities governed by Section 39.2, and except for fossil fuel mining facilities, the granting of a permit under this Act shall not relieve the applicant from meeting and securing all necessary zoning approvals from the unit of government having zoning jurisdiction over the proposed facility.

Before beginning construction on any new sewage treatment plant or sludge drying site to be owned or operated by a sanitary district organized under "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers", approved May 29, 1889, as amended, for which a new permit (rather than the renewal or amendment of an existing permit) is required, such sanitary district shall hold a public hearing within the municipality within which the proposed facility is to be located, or within the nearest community if the proposed facility is to be located within an unincorporated area, at which information concerning the proposed facility shall be made available to the public, and members of the public shall be given the opportunity to express their views concerning the proposed facility.

(d) The Agency may issue RCRA permits exclusively under this subsection to persons owning or operating a facility for the treatment, storage, or disposal of hazardous waste as defined under this Act.

All RCRA permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and regulations pursuant thereto, and may include schedules for achieving compliance therewith as soon as possible. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a RCRA permit.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of RCRA permits, and which are consistent with the Act or regulations adopted by the Board, and with the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and

regulations pursuant thereto.

The applicant shall make available to the public for inspection all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(e) The Agency may issue UIC permits exclusively under this subsection to persons owning or operating a facility for the underground injection of contaminants as defined under this Act.

All UIC permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto, and may include schedules for achieving compliance therewith. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a UIC permit.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of UIC permits, and which are consistent with the Act or regulations adopted by the Board, and with the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection, all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(f) In making any determination under regulations established pursuant to subsection (d) or (e) of Section 9.1 of this Act:

(1) The Agency shall have authority to make the determination of any question required to be determined by the Clean Air Act, this Act, or the regulations of the Board, including the determination of the Lowest Achievable Emission Rate or Best Available Control Technology, consistent with the Board's regulations.

(2) The Agency shall, after conferring with the applicant, give written notice to the applicant of its

proposed decision on the application including the terms and conditions of the permit to be issued and the facts, conduct or other basis upon which the Agency will rely to support its proposed action.

(3) Following such notice, the Agency shall give the applicant an opportunity for a hearing in accordance with the provisions of Sections 10 through 15 of "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended.

(g) The Agency shall include as conditions upon all permits issued for hazardous waste disposal sites such restrictions upon the future use of such sites as are reasonably necessary to protect public health and the environment, including permanent prohibition of the use of such sites for purposes which may create an unreasonable risk of injury to human health or to the environment. After administrative and judicial challenges to such restrictions have been exhausted, the Agency shall file such restrictions of record in the Office of the Recorder of the county in which the hazardous waste disposal site is located.

(h) Commencing January 1, 1987, a hazardous waste stream may not be deposited in a permitted hazardous waste site unless specific authorization is obtained from the Agency by the generator and the disposal site owner and operator for the deposit of that specific hazardous waste stream. The Agency may grant specific authorization for disposal of hazardous waste streams only after the generator has reasonably demonstrated that, considering technological feasibility and economic reasonableness, the hazardous waste cannot be reasonably recycled for reuse, nor incinerated or chemically, physically or biologically treated so as to neutralize the hazardous waste and render it nonhazardous. In granting authorization under this Section, the Agency may impose such conditions as may be necessary to accomplish the purposes of the Act and are consistent with this Act and regulations promulgated by the Board hereunder. If the Agency refuses to grant authorization under this Section, the applicant may appeal as if the Agency refused to grant a permit, pursuant to the provisions of subsection (a) of Section 40 of this Act.

(i) Before issuing any RCRA permit or any permit for the conduct of any waste-transportation or waste-disposal operation, the Agency shall conduct an evaluation of the prospective operator's prior experience in waste management operations. The Agency may deny such a permit if the prospective operator or any employee or officer of the prospective operator has a history of:

(1) repeated violations of federal, State, or local laws, regulations, standards, or ordinances in the operation

of refuse disposal facilities or sites; or

(2) conviction in this or another State of any crime which is a felony under the laws of this State, or conviction of a felony in a federal court; or

(3) proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposing of any hazardous waste.

(j) The issuance under this Act of a permit to engage in the surface mining of any resources other than fossil fuels shall not relieve the permittee from its duty to comply with any applicable local law regulating the commencement, location or operation of surface mining facilities.

(k) A development permit issued under subsection (a) of Section 39 for any facility or site which is required to have a permit under subsection (d) of Section 21 shall expire at the end of 2 calendar years from the date upon which it was issued, unless within that period the applicant has taken action to develop the facility or the site. In the event that review of the conditions of the development permit is sought pursuant to Sections 40 or 41, or permittee is prevented from commencing development of the facility or site by any other litigation beyond the permittee's control, such two-year period shall be deemed to begin on the date upon which such review process or litigation is concluded.

(l) No permit shall be issued by the Agency under this Act for construction or operation of any facility or site located within the boundaries of any setback zone established pursuant to this Act, where such construction or operation is prohibited.

(Ch. 111 1/2, par. 1039.2)

Sec. 39.2. (a) The county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, shall approve the site location suitability for such new regional pollution control facility only in accordance with the following criteria:

(i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;

(ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

(iv) the facility is located outside the boundary of the 100 year flood plain as determined by the Illinois Department of Transportation, or the site is flood-proofed to meet the standards and requirements of the Illinois Department of

Transportation and is approved by that Department;

(v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows; and

(vii) if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release; and

(viii) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

(b) No later than 14 days prior to a request for location approval the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located. Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the county board, and a description of the right of persons to comment on such request as hereafter provided.

(c) An applicant shall file a copy of its request, accompanied by all documents submitted as of that date to the Agency in connection with its application except trade secrets as determined under Section 7.1 of this Act, with the county board of the county or the governing body of the municipality in which the proposed site is located. Such copy shall be made available for public inspection at the office of the county board or the governing body of the

municipality and may be copied upon payment of the actual cost of reproduction.

Any person may file written comment with the county board or governing body of the municipality concerning the appropriateness of the proposed site for its intended purpose. The county board or governing body of the municipality shall consider any comment received or postmarked not later than 30 days after the date of the last public hearing.

(d) At least one public hearing is to be held by the county board or governing body of the municipality no sooner than 90 days but no later than 120 days from receipt of the request for site approval, such hearing to be preceded by published notice in a newspaper of general circulation published in the county of the proposed site, and notice by certified mail to all members of the General Assembly from the district in which the proposed site is located and to the Agency. The public hearing shall develop a record sufficient to form the basis of appeal of the decision in accordance with Section 40.1 of this Act.

(e) Decisions of the county board or governing body of the municipality are to be in writing, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section. In granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board. Such decision shall be available for public inspection at the office of the county board or governing body of the municipality and may be copied upon payment of the actual cost of reproduction. If there is no final action by the county board or governing body of the municipality within 180 days after the filing of the request for site approval the applicant may deem the request approved.

(f) A local siting approval granted under this Section shall expire at the end of 2 calendar years from the date upon which it was granted, unless within that period the applicant has made application to the Agency for a permit to develop the site. In the event that the local siting decision has been appealed, such 2 year period shall be deemed to begin on the date upon which the appeal process is concluded.

Upon the expiration of a development permit under subsection (k) of Section 39, any associated local siting approval granted for the facility under this Section shall also expire.

(g) The siting approval, procedures, criteria and appeal procedures provided for in this Act for new regional pollution control facilities shall be the exclusive siting

procedures and rules and appeal procedures for such facilities. Local zoning or other local land use requirements shall not be applicable to such siting decisions.

(h) Nothing in this Section shall apply to any existing or new regional pollution control facility located within an unincorporated area of any county having a population of over 3,000,000 or within the corporate limits of cities or municipalities with a population of over 1,000,000.

(i) The Department shall make a study of technical considerations relating to the siting of new regional pollution control facilities. Such study shall include, but need not be limited to, a determination of the geologic and hydrologic conditions in the State most suitable for the siting of such facilities, the establishment of a data base on such conditions in Illinois, and recommendations for the establishment of technical guidelines and criteria to be used in making such siting decisions. The Department shall report such study and recommendations to the General Assembly, the Governor, the Board and the public no later than October 1, 1984.

The Board shall adopt regulations establishing the geologic and hydrologic siting criteria necessary to protect usable groundwater resources which are to be followed by the Agency in its review of permit applications for new regional pollution control facilities. Such regulations, insofar as they apply to new regional pollution control facilities authorized to store, treat or dispose of any hazardous waste, shall be at least as stringent as the requirements of the Resource Conservation and Recovery Act and any State or federal regulations adopted pursuant thereto.

(j) Any new regional pollution control facility which has never obtained local siting approval under the provisions of this Section shall be required to obtain such approval after a final decision on an appeal of a permit denial.

(k) A county board or governing body of a municipality may charge applicants for siting review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by such county or municipality in the siting review process.

Section 15. Section 5.212 is added to "An Act in relation to State finance", approved June 10, 1919, as amended, the added Section to read as follows:

(Ch. 127, new par. 141.212)

Sec. 5.212. The Public Health Water Permit Fund.

Section 16. This Act shall take effect upon becoming law.

APPROVED: September 24, 1987 EFFECTIVE: September 24, 1987